United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

408

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BRIEF OF APPELLANT

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21479

MISSETTE JONES,

Appellant,

v.

JOHN W. GLEN, INC.,

Appellee.

APPEAL FROM THE UNITED STATES

DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ROBERT H. REITER

Attorney for Appellant

SPAULDING, REITER & ROSE
1422 K Street, N. W.
Washington, D. C. 20005

I N D E X

TABLE OF CASES

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21479

MUSSETTE JONES,

Appellant,

v.

JOHN W. GLEN, INC.,

Appellee.

BRIEF OF APPELLANT

Statement of Questions Presented

1. Does the fact of filing of an action, arising from injuries resulting from an automobile accident, in the District of Columbia Court of General Sessions, where recovery is limited to $10,000, bar the later filing of suit in the United States District Court for the District of Columbia, before trial of the action previously filed, upon discovery that the value of the damages exceeds $10,000?

2. Does the refusal of a judge of the District of Columbia Court of General Sessions to allow the voluntary dismissal of a suit in that court, after the filing of a suit on the same cause of action in the United States District Court for the District of Columbia, justify the dismissal of the action by the District Court?

3. Does the dismissal of an action in the United States District Court for the District of Columbia on the basis of the pendency of an action based on the same cause in the District of Columbia Court of General Sessions constitute a deprivation of due process and taking of property without compensation under the Fifth Amendment to the Constitution of the United States?

JURISDICTIONAL STATEMENT

This Court has jurisdiction, under Title 28, United States Code, Section 1291, to review actions such as the present one brought in the United States District Court for the District of Columbia where the amount in controversy exceeds $10,000.

STATEMENT OF THE CASE

Appellant was a passenger involved in an automobile collision, and brought an action in the District of Columbia Court of General Sessions, where the maximum judgment authorized by statute is $10,000, for damages based on negligence.

Within the three year period prescribed for the filing of negligence actions in this jurisdiction, and before the action in the other court had been tried or even pre-tried, it being ascertained that appellant was permanently disabled from working, and that the value of her damages would certainly exceed the jurisdictional limits of the Court of General Sessions, appellant filed suit in the District Court praying

judgment in the amount of $250,000.

Appellee filed a motion to dismiss the action in the District Court on the ground of the pendency of the other action. The court below, at the hearing on the motion, requested appellant to apply for dismissal in the other court, and continued the hearing. Appellee moved the Court of General Sessions for leave to dismiss the action in that court, and appellee objected. The court refused to grant appellant leave to dismiss her action. Upon being advised of the action of the Court of General Sessions, the court below granted appellee's motion to dismiss. From that action appellant appeals.

STATEMENT OF POINTS

1. The filing of action in a court of limited jurisdiction is no bar to the filing of suit on the same cause in a court of general jurisdiction upon discovery that the damages exceed the jurisdictional limit of the court of limited jurisdiction.

2. The refusal of a judge of the court of limited jurisdiction to permit the dismissal of an action in that court in order that an action in a court of general jurisdiction may proceed, does not justify the dismissal of the action brought in the court of general jurisdiction within the statutory period prescribed therefore.

3. The dismissal of an action in a court of general jurisdiction on the ground of the pendency of an action based on the same cause in a court of limited jurisdiction is a deprivation of due process under the Fifth Amendment to the Constitution of the United States.

ARGUMENT

1. The filing of action in a court of limited jurisdiction is no bar to the filing of suit on the same cause in a court of general jurisdiction upon discovery that the damages exceed the jurisdictional limit of the court of limited jurisdiction.

Since there is no transcript in this case, the issues being legal and based on a motion to dismiss before trial, reference to transcript of hearing is omitted hereinafter. Appellant does desire to refer to the Affidavit in Support of Application to Proceed Without Prepayment of Costs in the court below, wherein it is indicated that appellant has been without employment for many months.

The problem presented on this appeal has apparently not been raised on appeal in any case reported in this jurisdiction. However, there have been cases in other jurisdictions involving the relationship of proceedings pending simultaneously in courts of general and limited jurisdiction involving the same subject matter. For example, in Howe v. Larson, 68 S.D. 203, 299 N.W. 876, the Supreme Court of South Dakota held in a case involving a proceeding in a County Court followed by an action in the Circuit Court, the court of general jurisdiction:

> "When a court of competent jurisdiction undertakes to deal with the subject matter of a case its authority continues, subject only to appellate authority, until the matter is finally disposed of, and no court of co-ordinate authority is at liberty to interfere. This second principle, which but seeks to promote an orderly and dignified procedure, yields to the

> more vital and fundamental principle of justice which affirms that every litigant shall be accorded his day before a tribunal competent to afford adequate and complete relief. 14 Am. Jur. 436. So it appears that the competency of the County Court to deal adequately and completely with the plaintiff's rights is the determining factor in the proper application of both principles advanced by the defendant."

Similarly, in Milwaukee v. Drew, 220 Wis. 519, 265 N.W. 683, 104 A.L.R. 1387, 1402, the Supreme Court of Wisconsin held in a comparable situation that the general rule did not apply where a county court of limited jurisdiction was not in a position to afford as adequate and complete a remedy as a circuit court, which had general jurisdiction.

The only federal case appellant's counsel has located involving the effect of an action in a court of limited jurisdiction on a later suit involving the same question but seeking a judgment in excess of the jurisdiction of a court of limited jurisdiction is Carter-Hughes Pump Co. v. Llera, 205 Fed. 209, 212, further proceedings at 215 Fed. 79, where the Sixth Circuit Court of Appeals held in a case involving an action in the Municipal Court of New York and an action in the Federal District Court:

> "We next observe that the limitation of the jurisdiction of the New York court to the sum of $500 does not operate necessarily to prevent the existence of an adjudication affecting a larger sum."

The court compared the situation to a judgment for an installment of interest under a lease, where a judgment for an installment simply established the existence of the lease, the principal ob-

ligation from which the installment is thrown off, citing Cromwell v. County of Sac, 94 U.S. 351, and Louisville Co. v. Carson, 159 Ill. 247, 48 N.E. 402.

Applying the rule of this line of cases, where the court of limited jurisdiction - in this case the District of Columbia Court of General Sessions - cannot afford appellant full relief, and at most can establish the question of liability, leaving to the court below the determination of damages over and above the jurisdictional limits of the other court, it is submitted that the pendency of an action in the inferior court is no bar to the filing and prosecution of an action in the court below.

2. The refusal of a judge of the court of limited jurisdiction to permit the dismissal of an action in that court in order that an action in a court of general jurisdiction may proceed does not justify the dismissal of the action brought in the court of general jurisdiction within the statutory period prescribed therefore.

The two-stage proceeding indicated in the Carter-Hughes Pump case, supra, page 5, is of course duplicatory and time-wasting, particularly in this jurisdiction where courts have such a back-log of cases. For this reason appellant was entirely willing and desirous of dismissing the action in the Court of General Sessions, and permitting the court below to proceed exclusively to determine the issues of liability and damages, and applied to the Court of General Sessions for leave to do so. It is important to note that

appellee, having come into the court below objecting to the simultaneous consideration of the subject matter by the two courts, not only did not consent to the dismissal of the action in the Court of General Sessions, necessitating a motion therefore, but actively objected. Appellee's motivation is obvious: if it could require that the case in the court where it could in no event be faced with a judgment of more than $10,000 be continued, it could then argue in the court below that appellant should not have two bites at the apple, to use the vernacular. This tactic was entirely successful, since the Court of General Sessions refused to allow the dismissal of the action in that court, and as a result, the court below felt constrained to dismiss the action there.

Appellant pointed out to the court below that despite the action of the Court of General Sessions in refusing to permit dismissal, it had authority to grant injunctive relief against the continuation of the proceeding in the other court which might interfere with the jurisdiction of the District Court, particularly since there are further issues of res judicata that might arise as to both liability and damages in the event the Court of General Sessions should proceed. See Palais Royal v. Calhoun, 67 App. D.C. 364, 92 F. 2d 515, Smith v. Leigh, 101 U.S.App. D.C. 225, 248 F. 2d 85. The court below was the proper forum for such relief. Bair v. Bryant, 96 A. 2d 508.

Thus the action of the other court did not require the court below to dismiss the appellant's action there, and on the con-

trary, called for protective action for the preservation of the jurisdiction of the court, since it was likely that the trial of the action in the other court would be reached for trial first.

This situation is entirely distinguishable from that involved when two federal courts have concurrent jurisdiction, or when a State court and federal court, both having general jurisdiction to grant full relief, are subject to actions involving the same cause of action. There questions of comity and federal policy are present. Here there are simply a court of general jurisdiction and one of limited jurisdiction which cannot possibly grant full relief. It is submitted that the court below erred in dismissing the action based on the refusal of the court of limited jurisdiction to permit withdrawal of the action in that court.

3. The dismissal of an action in a court of general jurisdiction on the ground of the pendency of an action based on the same cause in a court of limited jurisdiction is a deprivation of due process under the Fifth Amendment to the Constitution of the United States.

It is submitted that the error committed by the court below was not simply one of law, and so affected appellant's property rights in her cause of action as to constitute a violation of due process under the Fifth Amendment to the Constitution of the United States. A legal cause of action is certainly a property right protected by the Fifth Amendment, and the right to prosecute this

cause of action in a court having jurisdiction to grant full relief is an essential element of that right. Washington Southern Co. v. Baltimore Co., 263 U.S. 629, 635. Every citizen is entitled to resort to all the courts of the country, and to invoke all the laws and remedies which these courts may afford them. Insurance Co. v. Morse, 20 Wall. (66 U.S.) 445, 451. It is suggested that to deprive appellant of her right to have her cause of action in the court below considered by reason of her having, at a time when here injuries were not believed to be serious enough to justify an action in that court, is not a Constitutionally sufficient justification. There is no element of waiver or election involved, and no application of the equitable principle of estoppel was attempted to be invoked or would apply under a circumstance where appellant was in no manner to blame.

Therefore, it is inescapable that the action of the court below effectively deprived appellant of the right to have her cause of action considered by a court having jurisdiction to grant her full relief, and her property rights were thereby unconstitutionally infringed.

CONCLUSION

For the above reasons, appellant requests the Court to reverse the judgment of the Court below, and to remand this action with instructions that it be reinstated.

Respectfully submitted,

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Attorneys for Appellant

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing brief was mailed, postage prepaid, this ____ day of January, 1968, to Holford and Caulfield, Bender Building, Washington, D. C. 20036, attorneys for appellee.

Robert H. Reiter

BRIEF FOR APPELLEE

In the

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 21,479

MUSSETTE JONES,

Appellant,

v.

JOHN W. GLEN, INC.,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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QUESTIONS PRESENTED

1. Whether the trial court properly dismissed an action filed in the United States District Court for the District of Columbia when an action arising out of the same subject matter was pending in the District of Columbia Court of General Sessions.

2. Does the refusal of a judge of the District of Columbia Court of General Sessions to allow the voluntary dismissal of a suit in that court, after the filing of a suit on the same cause of action in the United States District Court for the District of Columbia, justify the dismissal of the action by the District Court when there is no showing that there has been any change of circumstance between the time of the filing of an action in the District of Columbia Court of General Sessions and the United States District Court for the District of Columbia?

3. Does the dismissal of an action in the United States District Court for the District of Columbia on the basis of the pendency of an action based on the same cause in the District of Columbia Court of General Sessions constitute a deprivation of due process and taking of property without compensation under the Fifth Amendment to the Constitution of the United States?

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Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On April 21, 1965, the appellant Mussette Jones filed suit against the appellee John W. Glen, Inc. for injuries allegedly sustained as a result of an accident that occurred on April 23, 1964. That suit was filed in the District of Columbia Court of General Sessions, Civil Action No. GS 7616-65, wherein judgment was demanded in the amount of $10,000.00 besides interest and costs.

On April 7, 1967, the appellant Mussette Jones filed suit against the appellee John W. Glen, Inc. for injuries allegedly sustained as a result of an accident that occurred on April 23, 1964. That suit was filed in the United States District Court for the District of Columbia, Civil Action No. 860-67.

The appellee John W. Glen, Inc. filed a motion to dismiss the United States District Court action on the basis of the pendency of the action in the District of Columbia Court of General Sessions. On June 29, 1967, the appellee's motion to dismiss came on for oral hearing before the Honorable William B. Jones. At that time attorney for appellant made a representation to the Court that he was going to file a motion to dismiss the action in the District of Columbia Court of General Sessions. The court thereupon continued the motion to dismiss pending the outcome of the action by the District of Columbia Court of General Sessions.

On July 25, 1967, attorneys for both appellant and appellee appeared before the Honorable John J. Malloy in the District of Columbia Court of General Sessions on the appellant's motion to dismiss the action pending in that court. After argument the motion to dismiss the action in the District of Columbia Court of General Sessions was denied.

On July 27, 1967, counsel for both appellant and appellee again appeared before the Honorable William B. Jones for additional argument on the motion to dismiss at which time the court took the matter under advisement and requested counsel to file memorandum. At this hearing counsel for the appellee submitted to the court a medical report concerning the appellant Mussette Jones which showed that she had completely recovered from her injuries. The appellant made no showing to the United States District Court for the District of Columbia that there was any change in the appellant's condition between the time of the filing of the action in the District of Colum-

bia Court of General Sessions and the time of the filing of the action in the United States District Court for the District of Columbia.

SUMMARY OF ARGUMENT

The appellant John W. Glen, Inc. contends that the court below properly granted its motion to dismiss without prejudice in view of the fact that the plaintiff had submitted herself to the jurisdiction of the District of Columbia Court of General Sessions in an action arising out of the same subject matter as the suit filed in the United States District Court for the District of Columbia. The court correctly, in its discretion, refused to allow two cases to be pending at the same time, especially in view of the fact that the plaintiff had made no showing of a change of condition or circumstances since the time of the filing of the action in the District of Columbia Court of General Sessions and the United States District Court for the District of Columbia.

The judge below and the judge in the District of Columbia Court of General Sessions correctly concluded that the defendant had been put to great expense in defending the action in the District of Columbia Court of General Sessions and that it would be a hardship to again undergo the same expenses in the United States District Court for the District of Columbia, and further that there would be another delay of approximately two years before the case would come to trial.

ARGUMENT

I.

Whether the Trial Court Properly Dismissed an Action Filed in the United States District Court for the District of Columbia When an Action Arising Out of the Same Subject Matter Was Pending in the District of Columbia Court of General Sessions.

At the outset the appellant would like to state that it could find no controlling law in this jurisdiction or in other jurisdictions which is directly on point for the questions presented on this appeal. It would appear that this is so because of the unique judicial system of the District of Columbia wherein we have two courts of exclusive jurisdiction. It would appear that the general proposition is that the court that first acquires jurisdiction will retain that jurisdiction especially where the plaintiff selected the jurisdiction.

> "Ordinarily the plaintiff has the right to select in which court of several having concurrent jurisdiction he will bring his action, and this choice is binding on the defendant, although the other court having concurrent jurisdiction might have been more favorable to him. But the plaintiff is also bound by his selection and can not thereafter bring an action concerning the same case in a tribunal of concurrent jurisdiction unless his latest suit involves a question that can not be adjudicated by the first court." 20 Am. Jur. 2d 482

In this particular case the appellant Mussette Jones made a choice of the forum in which to bring her action against the appellee John W. Glen, Inc. The action filed in the District of Columbia Court of General Sessions was filed approximately two years prior to the filing of the action in the United States District Court for the

District of Columbia. The judge below gave the appellant an opportunity to dismiss her action in the District of Columbia Court of General Sessions. In the hearing before the District of Columbia Court of General Sessions nothing new was pointed out to the court that would show that the appellant had suffered a change of circumstance between the time of the filing of her action and the hearing of her motion to dismiss.

II.

Does the Refusal of a Judge of the District of Columbia Court of General Sessions To Allow the Voluntary Dismissal of a Suit in That Court, After the Filing of a Suit on the Same Cause of Action in the United States District Court for the District of Columbia, Justify the Dismissal of the Action by the District Court When There Is No Showing That There Has Been Any Change of Circumstance Between the Time of the Filing of an Action in the District of Columbia Court of General Sessions and the United States District Court for the District of Columbia?

At the oral hearings of the motion to dismiss the appellant offered no evidence or profferred to the court that there was a change in circumstances since the time of the filing of the action in the District of Columbia Court of General Sessions and the action in the United States District Court for the District of Columbia. Appellee on the other hand submitted to the court a medical report wherein it showed that the appellant had completely recovered from her injuries. The appellee in this case has expended substantial sums of money in legal expenses in defending the District of Columbia Court of General Sessions, including deposition, interrogatories, pre-trial, and preparation for trial. It would certainly be an injustice for the

appellee to again have to undergo the same discovery proceedings and duplicate the same expenses. It certainly would seem that the appellant once having made a choice to have her case tried in the District of Columbia Court of General Sessions should be bound by that choice. See *Geracy, Inc. v. Hoover*, 77 U.S. App. D.C. 57:

> "[1] We see no reason for disturbing the judgment. While we sympathize with appellant in the dilemma which seemed to confront it, nevertheless, it was within its power to elect in what manner it should vindicate its claim. Furthermore, it was its duty to elect. Appellant's pleadings indicate that it tried to avail itself of the jurisdiction of both courts, at the same time, for the trial of the same issue. In fact, the complaint, which initiated the case in the District Court, is entitled a '*Plea* of Set Off or *Plea* for Recoupment.' (Italics supplied) The only sense in which it could be a plea was that it was by way of answer to the pleadings of appellee theretofore filed in the Municipal Court. The law entitled appellant to but one trial of the issue. If it chose to reduce its claim to the dimensions of municipal court jurisdiction, and submit to the adjudication of that court, it was privileged to do so; but, if it did so, it forfeited the privilege of having the same issue adjudicated in the District Court." [Footnotes omitted]

Appellant in her brief states that the motivation of the appellee in opposing the dismissal of the action in the District of Columbia Court of General Sessions was obvious in that it felt it would limit its liability. A more compelling motivation was the fact that the appellee would be put to double expense and would face a long delay in having its case adjudicated.

III.

Does the Dismissal of an Action in the United States District Court for the District of Columbia on the Basis of the Pendency of an Action Based on the Same Cause in the District of Columbia Court of General Sessions Constitute a Deprivation of Due Process and Taking of Property Without Compensation Under the Fifth Amendment to the Constitution of the United States?

The appellant certainly is not deprived of due process and is not having property taken from her without compensation under the Fifth Amendment to the Constitution. The appellant still has a cause of action pending in the District of Columbia Court of General Sessions wherein she can recover up to $10,000.00 for injury and damage allegedly sustained in the automobile accident in question. It is of interest to note that the District of Columbia Court of General Sessions action was scheduled for trial on January 25, 1968, but was continued at the request of the appellant. The interest of justice would seem to require that the action be tried in that court rather than face a delay of another two years or more awaiting its turn on the calendar of the United States District Court for the District of Columbia. If this case were to be reinstated in this court we would have a situation wherein it is conceivable that the appellant could recover in the action pending in the District of Columbia Court of General Sessions and again try her action in the court below, thereby allowing her double recovery.

CONCLUSION

Appellant in this case has made a choice to have her case tried in the District of Columbia Court of General Sessions. Appellee has gone to great expense in defending that case which now stands ready for trial. The appellant has made no showing of change of circumstance between the time of filing suit in the District of Columbia Court of General Sessions and the time of filing suit in the United States District Court for the District of Columbia. The court below correctly ruled that the matter in controversy is within the jurisdiction of the District of Columbia Court of General Sessions and, therefore, the judgment of the United States District Court for the District of Columbia should be affirmed.

Respectfully submitted,

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REPLY BRIEF FOR /PPELL/NT

THE UNITED ST/TES COURT OF /PPE/LS

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THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21479

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JOHN W. GLEN, INC.,

Appellee.

REPLY BRIEF FOR APPELLANT

Appellant would like at the outset to comment on certain factual statements made by the appellee in its brief:

1. In its Counterstatement of the Case, appellee states that it presented to the court below a medical report showing "that she had completely recovered from her injuries." Such statement is not in the record, and counsel for appellant has not been able to obtain a copy, although request therefore has been made on several occasions. Such a conclusion would be completely contrary to the subsequent incapacity and medical treatment of the appellant.

2. Appellee states that appellant made no showing of a change in her condition, the fact being that although such a change is not an issue in this appeal, appellant showed that she had returned to work shortly after the accident giving rise to this action, but has now been forced to cease employment entirely, as indicated in the affidavit of the

appellant dated March 10, 1967 which is a part of the record. The record does not support appellee's statement.

3. Appellee states that a delay of approximately two years will occur before the case in the court below will reach trial, the fact being that appellant suggested in open court that the trial of this cause be advanced for trial due to appellant's not being able to pay for her medical expenses and inability to work, or in the alternative that the case be certified to the Court of General Sessions so that it could be tried together with the case pending there, thus avoiding a possible duplication while empowering that court to grant full relief. Counsel for appellee refused, and the court below indicated that in light of the showing that had been made as to the seriousness of appellant's injuries, it could not certify the case to the other court over appellee's objections. Authority for such certification exists as shown in a number of opinions of this Court, e. g. Barnard v. Schneider, 100 U.S.App. D.C. 152, 243 F. 2d 258, Melton v. Capital Transit Co., 102 U.S. App.D.C. 306, 253 F. 2d 42, and Gray v. The Evening Star Newspaper Co., 107 U.S.App.D.C. 292, 277 F. 2d 91. The relevancy of this is only to show that it was and is possible to overcome all the practical reasons given by appellee against appellant's position, but appellee is unwilling to do anything toward overcoming its own asserted disabilities.

4. Appellee calls the Court's attention to a continuance in the trial scheduled in the Court of General Sessions, implying a desire on appellant's part to delay that trial. Although this is not supported by the record, appellant would in any event take the liberty of pointing out that a motion to amend the pre-trial order in that court was still pending, so that the case was not ready for trial, requiring a continuance.

Appellee argues that "the general proposition is that the court that first acquires jurisdiction will retain that jurisdiction especially where the plaintiff selected the jurisdiction". Appellant has never suggested that the Court of General Sessions is ousted of jurisdiction, and that is not the issue in this case. The question is whether the court below is ousted of jurisdiction by reason of the earlier filing of suit in the court of limited jurisdiction.

It is worthy of note that the single case cited at the end of the American Jurisprudence quotation of appellee is Kane v. National Surety Corp., 94 F. Supp. 505 (U.S.D.C.ND. Tex.), shown in the footnote to the passage in the encyclopedia although not in the quotation itself. The court in that case restated the general rule that "suit may be instituted in the jurisdiction of both national and state sovereignty, and each court may proceed to final judgment. The court first reaching that harvest supports a plea which would demand the dismissal of the uncompleted case."

This is exactly the position of the appellant - that the pendency of an action in the Court of General Sessions is not, of itself, a ground for dismissal of an action in the court below.

A different position arises when one of the two courts decided the issues, as indicated in the Kane opinion, the question of res judicata then being presented. This does not arise until a decision by a court, as was the case in the Geracy opinion quoted by appellee, where the Court held that "the Municipal Court decided appellant had no cause of action for any amount; thus adjudicating, adversely to appellant, the entire, fundamental and underlying issue of liability, the elements of which are the same regardless of the amount involved. As that precise issue was fully tried, and determined adversely to appellant, the determination became res judicata thereof". The court quoted Scott, Collateral Estoppel by Judgment, 56 Harv. L. Rev. 1, 3, in its footnote. It further said that it need not decide what appellant's rights would have been if the issue had been decided in appellant's favor.

The Court split in the Geracy case, Judge Rutledge in his dissent stating that res judicata would not apply in cases involving decisions of a court of limited jurisdictbn. See also Nash v. Woodland Motor Co., 32 Ohio App. 343, 168 N.E. 67, holding that a court of general jurisdiction cannot be deprived a jurisdiction by a claimed defense of res judicata from a court of limited jurisdiction.

We do not even reach this issue in the present case, since even now there has been no decision in the other court. If the appellee insists on going to trial in that court, and a determination is made of liability, which appellant believes appellee will admit is entirely probable, since appellant was riding as a passenger in an automobile which was struck in the rear by one of appellee's trucks, the only issue which need be decided by the court below is the amount of damages beyond those awarded by the other court.

Appellee suggests the possibility of double expense and double recovery. As to the first, since the issues in the two actions are precisely the same, the interrogatories and deposition directed to the appellant, which was the extent of discovery, can certainly be utilized to the same extent in examining the appellant in the court below as in the other court. As to double recovery, it is inconceivable that the court below should not take into consideration any award by the other court, in arriving at its judgment.

Appellant respectfully reiterates that in her judgment the real reason for appellee's position is an attempt to limit its liability to $10,000, the jurisdictional limit of the Court of General Sessions, since appellant is willing and desirous that this case be tried as soon as possible and has indicated her attitude in this respect to the appellee and the court below, only to be frustrated in her efforts

by the unwillingness of the appellee to consent, or even simply not object, to action by the court below which would accomplish that end without any jeopardy to appellee. Although perhaps not a technical estoppel, this should at least clarify appellee's true intentions - to deprive appellant of the opportunity of recovering the full value of her injuries.

The effect of the action of the court below is just that - a result which is sanctioned neither by statute nor precedent, and one which deprives appellant of a right to have her claim considered by a court competent to afford her a full measure of relief. That right is guaranteed under the Constitution of the United States from infringement.

Respectfully submitted,

Robert H. Reiter

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Attorneys for Appellant

It is hereby certified that a copy of the foregoing reply brief was mailed, postage prepaid, this ____ day of March, 1968, to Holford and Caulfield, Bender Building, Washington, D. C. 20036, attorneys for appellee.

Robert H. Reiter